IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.313 of 2005
Judgment reserved on: November 13, 2007
Decided on: November 26, 2007

Surat Ram **…Appellant**

Versus

State of H.P. **…Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the appellant : Mr. Rahul Mahajan, Advocate.

For the respondent : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr. D.S. Nainta, Dy. Advocate General.

Surjit Singh, Judge

Appellant has preferred this appeal against the judgment of the Sessions Court, whereby he has been convicted of offences, punishable under Sections 302, 382 and 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- for offence under Section 302 I.P.C, to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- for offence, under Section 382 I.P.C and to undergo imprisonment for one year and to pay a fine of Rs.2000/- for offence, under Section 201 I.P.C.

2. First the prosecution version may be noticed. Appellant Surat Ram was employed as a grazier with PW-13 Achhar Singh, who appears to have a large herd of sheep and goats. PW-13 Achhar Singh

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Whether reporters of the local papers may be allowed to see the judgment?

had close friendship with deceased Durga Dutt. Some time in the month of January, 2004, when the appellant and PW-13 Achhar Singh were in village Khudla, Tehsil Sarkaghat, District Mandi, with the herd of sheep and goats, the appellant was put on night watch duty by PW-13 Achhar Singh. The appellant went to sleep, as a result of which there was no check on the sheep and goats and they strayed into the nearby fields of the residents of the area and damaged the standing crops. Next morning, on coming to know about the damage to the crops by his herd of sheep and goats, he rebuked the appellant. The latter got enraged and tried to assault PW-13 Achhar Singh. Thereafter, the appellant disappeared . He went to Durga Dutt (deceased), a close friend of PW-13 Achhar Singh, on 9.1.2004 and told him that Achhar Singh's son had met with an accident and was admitted in PGI and money was required by him (Achhar Singh) for treatment of his son. He also told him that Achhar Singh's sheep and goats had damaged the standing crops of some farmers due to which those farmers had impounded the herd and money was required for compensating those farmers to secure the release of impounded herd. Appellant told the deceased that he had been deputed by Achhar Singh to request him to arrange and send money to him immediately.

3. PW-13 Achhar Singh used to sell lambs and kids to people of the area where the deceased lived. At times, kids and lambs were sold on credit and Durga Dutt used to collect the money on behalf of Achhar Singh and remit the same to him later on. The deceased believed the appellant and collected from the residents of the area, the money which was due to Achhar Singh and also borrowed Rs.20,000/- from his son-in-law, Tej Ram (PW-6). Next morning, i.e., 10.1.2004, he accompanied by the appellant started for the place where PW-13 Achhar Singh was camping, as per information given by the appellant. On the way they went to the house of PW-4 Khem Chand. Deceased told said Khem Chand that

he was going to pay money to Achhar Singh, which he had collected and borrowed from various persons as he required the same for the treatment of his son who was admitted to PGI and also for compensating the farmers whose crops had been damaged by his herd. PW-4 Khem Chand also paid Rs.1000/- to the deceased and with the addition of that amount of money, the total amount with the deceased rose to Rs.60,000/-.

4. Deceased did not return till 13th January, 2004, even though on 14th January, 2001 some ceremonies, in connection with the death of his father, which had taken place a month before, were to be observed and his presence during such ceremonies was essential. On 13.1.2004, his son PW-5 Rup Lal returned home from Sundernagar where he was employed with Himachal Road Transport Corporation. He was informed by his wife that the deceased had left in the company of the appellant on 10.1.2004 in the morning, but had not returned. PW-5 Rup Lal then started searching for the deceased.

5. In the meanwhile, a dead body was spotted in a Nullah in the area falling within the jurisdiction of Police Station, Ghumarwin. Police was informed telephonically by PW-3 Rajinder Singh. Police reached the spot after some time. Nobody could identify the dead body. At a distance of about 200 feet from the site where the dead body lay, a ***Gaddi Chola*** (cloak worn by Gaddis), some blankets, pants, shirt etc. were found. On 14.1.2004, PW-5 Rup Lal, one of the sons of the deceased accompanied by Tej Ram (PW6) and Khem Chand (PW4), went to village Kuthera in a Tata Sumo taxi, in search of the deceased. When they made enquiries with the residents of the village if any Gaddi had been camping in the area, they came to know that the police had recovered a dead body on 13.1.2004 from the Nullah and it had been carried to Police Station, Ghumarwin. All of them then went to Police Station, Ghumarwin, where the dead body was lying. They identified the dead body to be of Durga

Dutt, father of PW-5 Rup Lal. ***Gaddi Chola*** was identified to be the same, which the appellant was wearing on 9th and 10th January, 2004, when he was seen in the company of the deceased, by PW-4 Khem Chand and PW-6 Tej Ram. In the pocket of the pants worn by the deceased, only a sum of Rs.3900/- was found, though he was carrying Rs.60,000/- for being paid to PW-13 Achhar Singh.

6. Postmortem of the dead body was conducted by PW-1 Dr. N.K. Sankhyan, who found the following ante-mortem injuries:

1. There was incised wound on left side of forehead with clean cut margins. It is 5 cm in length with maximum breadth and depth in its central portion is 0.5 cm and 0.5 cms respectively. Clotted blood and blood fluid was present in and around the said wound.
2. There was lacerated wound on forehead 4cm x 1.75 cm x ½ cm with irregular margins over reddish coloured contusion in area of 6 cm x 6 cm extending upto right eyebrow and proximal part of bridge of nose. There were multiple reddish coloured grazed abrasions over the said contusion in its proximal part around the said lacerated wound. Clotted blood was present in and around the said wound.
3. (a) There was incised wound on right side of occipital region, in a oblique direction. It was 5 cm in length with maximum breadth in its centre was 0.5 cm and it was bone deep. Blood fluid was present in an around the wound.

   (b) 2 cm above to the above said wound (a) there was a incised wound having length 3 cms with maximum breadth in its centre was 0.5 cms x bone deep with presence of blood fluid in and around the said wound.

   (c) 2 cm above the said above wound (b) there was incised wound having length 2 cm with maximum

depth in its centre was 0.5 cms x bone deep with presence of blood fluid in and around the said wound.

After dissection of scalp and after reflecting the scalp, there was gross reddish coloured contusion on inner surface of scalp over right occipito-tempero-parietal regions and over left side tempro occipital regions. There was depressed comminuted fracture of skull in the right occipital region corresponding to above said wounds (a), (b) and (c) in area of 6 cm x 4 cm, there were multiple fissured fractures in all directions extending from the above said depressed comminuted fracture. Scanty blood fluid was oozing out from the said fracture.

After opening the skull cap, there was extra dural haematoma, after opening the dura there was gross sub dural haematoma in both occipito tempero-parietal regions with evidence of subarachnoid haematoma in these said areas. With laceration of brain in right occipital region corresponding to the above mentioned depressed comminuted fractures and above mentioned incised wound (a), (b) and (c).

After removing the brain and dura, there was fissured fracture in the base of skull on right side in posterior and middle cranial fossae extending to anterior cranial fossa. There was fissured fracture on inner table of skull on its lateral part on left side in temporo occipital region extending upto frontal area.

The doctor also noticed the following injuries:

1. Nose and cartilages, skin and muscles of face on both sides were absent exposing fractured nasal bones and other bones of the cheek and mandibles both sides extending to neck upto thyroid cartilages, the margins were irregular. The margins and remanant of subcutaneous tissues and muscles of face on right side having length 15 cm are yellowish pale in colour. Mandibles, maxilla, Hyoid bone on left side, larynx,

trachea, thyroid cartilages were normal. Whereas hyoid bone on right side was fractured. These were all post-mortem injuries probably due to gnawing by animals. Remains of subcutaneous tissues and muscles on left side of face were slightly reddish colour with irregular margin of skin, it was 22 cm in length appears to be due to gnawing by the animals and appears to be slight turning of head and face towards left side.

2. Left pinna was having lacerations with irregular margins and with absence of its parts appears to be due to gnawing by the animals. It was reddish in colour probably due to slight turning of head and face towards left side during and after death of the deceased.

Cranium and Spinal Cord

As already explained in list of injuries.

Thorax

Thoracic walls, ribs, cartilages, pleurae, larynx and traches were normal. Both lungs were normal and pale. Pericardium, heart and large vessels were normal and scanty of blood fluid was present.

Abdomen

Walls and peritoneum were normal and pale. Stomach was normal in size and shape and was containing blood fluid about 100 ml. with no specific smell of alcohol or poison. Small intestines were normal and having fluid and gases. Large intestines were normal and were having gases and scanty focal matter. Liver, spleen and both kidneys were normal and pale. Bladder was normal and empty. Organs of generation external and internal were normal.

Muscle bones joints

Injuries, fracture and dislocation are already explained. There was no disease of deformity."

He gave the opinion that the cause of death was ante-mortem head injury and the death could have occurred instantaneously with the infliction of the injury or within few hours and the probable time lag between the death

and the postmortem was 36 hours to 7 days. He also opined that injuries mentioned against Sr. No.3, were not possible with danda blows and they appeared to have been caused with some sharp and heavy weapon.

7. During the course of investigation, it came to notice that the deceased did not reach PW-13 Achhar Singh nor did he remit any amount of money to him, meaning thereby that the amount of Rs.60,000/-, which the deceased was carrying with him for being paid to PW-13 Achhar Singh, had been stolen. The police searched for the accused, but he was not available anywhere, not even at his native place. Ultimately, he was arrested from the shop of a *Halwai*, namely PW-7 Dharam Singh at Chail Chowk, Teshil Gohar, District Mandi about eight months later. He made a disclosure statement that he could lead to the place where he had killed the deceased. Thereafter he led the Investigating Officer and two independent witnesses to the site where the dead body of the deceased was found lying. He also made disclosure statement that he had used a "*danda"* with a "*kilni"* fitted on one end to kill the deceased, but the same could not be recovered.

8. Prosecution examined nineteen witnesses to bring the charge home to the appellant. In his statement, under Section 313 Cr. P.C, the appellant denied having gone to the deceased on 9.1.2004 and having told him that he had been deputed by PW-13 Achhar Singh, his master, to request him to arrange an amount of Rs.50,000/- to Rs.60,000/- and to remit the same to him (PW-13 Achhar Singh). He also denied having been in the company of the deceased on 9th or 10th January, 2004 and pleaded that he had been falsely implicated.

9. Learned counsel representing the appellant made a number of submissions to seek the reversal of judgment of conviction rendered by the trial Court. His first submission was that there was no evidence except the bald statement of PW-13 Achhar Singh that the appellant remained

employed with him as a grazier and that the testimony of Achhar Singh qua this fact was highly doubtful, because his statement was recorded by the police in October, 2004, whereas the incident had taken place in January, 2004 and that the witness had been introduced to create evidence against the appellant. He argued that when the appellant was not a servant of PW-13 Achhar Singh, the question of the deceased collecting money for Achhar Singh on the asking of the appellant and then accompanying him to the place where PW-13 Achhar Singh was allegedly camping with a huge amount of Rs.60,000/-, did not arise.

10. We are unable to agree with the plea in view of the categorical statement of not only PW-13 Achhar Singh, but also PW-5 Rup Lal, a son of deceased Durga Dutt. PW-13 Achhar Singh testified that he had engaged the appellant as a grazier and that in the month of *Poh* when he was at village Khudla with his herd of sheep and goats, the appellant after attempting to assault him, left his job. Even though suggestions were put to the witness that the appellant had never been employed by him for looking after and grazing his sheep and goats, yet on the basis of such suggestions alone or the denial by the appellant in his statement, under Section 313 Cr. P.C., that he was employed with PW-13 Achhar Singh, it cannot be said that he was not so employed. Statement of PW-13 Achhar Singh is corroborated by PW-5 Rup Lal, one of the sons of the deceased. The witness stated that appellant Surat Ram had been engaged by Achhar Singh to graze his cattle. He stated that he had visited their house twice before his last visit. No suggestion was put to the witness that the appellant was not a servant of PW-13 Achhar Singh. Thus, the testimony of the witness that the appellant was a servant of PW-13 Achhar Singh remains unchallenged and it cannot be disbelieved only for the reason that PW-13 Achhar Singh's statement was recorded by the police about ten months after the occurrence. There is an explanation for this delay. The

Investigating Officer of the case, namely PW-14 Inspector Shiv Chaudhary, stated that he could not record the statement of the witness prior to 28.10.2004, even though he had come to know that the appellant was employed with PW-13 Achhar Singh on 19.1.2004, because Achhar Singh had left his native place with his herd of sheep and goats. Moreover, even though Achhar Singh's statement was recorded in October, the facts stated by him were already part of the investigation record. Other witnesses had disclosed the fact of the appellant being the servant of Achhar Singh on the very day of the identification of the dead body i.e. 14.1.2004. Therefore, it cannot be said that the story of the appellant being a servant of Achhar singh is concocted and to prove it Achhar singh was introduced as a witness.

11. It was also submitted on behalf of the appellant that there was no evidence indicating that the deceased was in fact having a huge amount of Rs.60,000/- with him and if he did not have such amount of money, there was no motive for the appellant to kill him. Prosecution examined PW-6 Tej Ram, the son-in-law of the deceased, who testified that on 9.1.2004, the deceased met him in the company of the appellant and three-four other persons at a place called Damka and told him that Achhar Singh was in need of Rs.50,000/- to Rs.60,000/- and demanded some money from him upon which he gave him Rs.20,000/-. No doubt, the witness did not disclose the fact to the police during the course of investigation, while making statement Ext.DD, with which he was duly confronted, but that alone cannot be the reason to disbelieve the prosecution version that the deceased had arranged a sum of Rs.60,000/- for being paid to Achhar Singh, at the instance of the appellant, who visited him on 9.1.2004 and told that Achhar Singh was in need of money. The reason is that another witness, named PW-4 Khem Chand, testified that on 10.1.2004 in the morning, the deceased accompanied by the

appellant, visited his place and asked for a sum of Rs.1000/- to raise the amount of money being arranged for payment to PW-13 Achhar Singh, to Rs.60,000/-, as he was already having an amount of Rs.59,000/- with him. There is no reason to disbelieve the testimony of this witness, because he is in no way related to the deceased or his family members nor is he contradicted with his previous statement which he made to the police, under Section 161 Cr. P.C. qua this fact.

12. Appellant was named as the person in whose company the deceased left on 10.1.2004 at the earliest possible opportunity. PW-4 Rup Lal, one of the sons of the deceased, came to know about the death of the deceased on 14.1.2004 when he identified the dead body at Police Station, Ghumarwin and that very day he told the police that the deceased had left the house in the company of appellant Surat Ram. Similarly, PW-6 Tej Ram and PW-4 Khem Chand also told the police on 14.1.2004 itself, after seeing the dead body, that the deceased was seen in the company of the appellant on 9th and 10th January, 2004. None of these witnesses has any enmity with the appellant nor do they have any other reason or motive to falsely implicate him. Moreover, they named the appellant as the person in whose company the deceased left the house as soon as they saw the dead body and thus their version cannot be said to be an after thought.

13. Appellant denies that he was in the company of the deceased. No evidence has been led by him to show that he was not with the deceased on 9th and 10th January, 2004, but was elsewhere. Not only this, he has not even stated as to where he was on those dates. The deceased having been seen last in his company, the appellant owed an explanation as to how the deceased died or where did he leave him alive. But instead of offering any such explanation, he has pleaded that he was not with him. As already noticed hereinabove, it stands established

beyond any pale of doubt that the appellant was in the company of the deceased when the latter left his house on 10.1.2004 with an amount of Rs.60,000/- in his pocket. The aforesaid amount of money was not found on the dead body when it was searched by the police. That means, the money had been taken away by someone. PW-13 Achhar Singh denied the suggestion that the deceased visited him 5-7 days prior to the occurrence, meaning thereby that the money was not passed on by the deceased to the witness. Appellant was accompanying the deceased when he collected money from PW-6 Tej Ram on 9.1.2004 and from PW-4 Kehm Chand on 10.1.2004. Appellant was also knowing that the deceased had with him Rs.60,000/ -, because PW-4 Khem Chand says that when the deceased came to him accompanied by appellant Surat Ram, he told him that he was already having Rs.59,000/- and needed Rs.1000/- more to make the amount Rs.60,000/- for being paid to Achhar Singh.

14. Another submission made by the learned counsel for the appellant was that the weapon of offence had not been recovered by the police and this fact also rendered the accusation against the appellant highly doubtful. It is the perpetrator of the crime who knows about the weapon of the offence and how he disposes it off, after committing the crime. Normally, when a criminal is arrested soon after the occurrence, weapon of offence is recovered. Even in such case sometimes weapon of offence remains un-recovered. In a case where the criminal is arrested long after the commission of the crime, as the appellant in this case, it becomes very difficult to recover the weapon of offence. Therefore, the non-recovery of the weapon of the offence cannot be viewed as a flaw in the prosecution case entitling the appellant to acquittal, particularly when the other circumstances, which stand fully established by the prosecution evidence and which are being summarized hereinbelow, make a complete

chain and give rise to one and only one hypothesis that the deceased was murdered and it is the appellant and nobody else who committed the murder.

15. Circumstances which stand established to the hilt by the evidence on record are as follows:

(1) Appellant was employed as a grazier with PW-13 Achhar Singh, but he quit his job on or a few days before 9.1.2004 when he was chided by PW-13 Achhar Singh for being not watchful during the night,

(2) After quitting the job, the appellant went to deceased Durga Dutt, a friend of Achhar Singh and misrepresented to him that Achhar Singh was in need of money for treatment of his son, who was admitted in PGI with injuries sustained in an accident and also to seek release of his herd of sheep and goats, which had been impounded by the farmers for causing damage to their crops,

(3) Durga Dutt (deceased) arranged Rs.60,000/- to the knowledge of the appellant and left in the company of the appellant towards the site where PW-13 Achhar Singh was disclosed by the appellant to be camping on 10.1.2004,

(4) Durga Dutt (deceased) did not reach PW-13 Achhar Singh nor did he return home and his dead body was found in a Nullah in the area falling within the jurisdiction of Police Station, Ghumarwin on 13.1.2004,

(5) The amount of Rs.60,000/-, which the deceased was carrying, was not found on his dead body,

(6) Durga Dutt had been killed by being hit on the back of his skull with a heavy sharp edged weapon, per testimony of PW-1 Dr. N.K. Sankhyan,

(7) The appellant absconded and was not available at his place after committing murder of Durga Dutt. The fact is testified by PW-18 SI Balwant Singh,

(8) The appellant took up the job of a sweets maker at the shop of PW-7 Dharam Singh in a remote area and started living in the lower storey of the same building, per testimony of PW-7 Dharam Singh, apparently with a view to avoiding being seen by others.

16. The aforesaid circumstances, in our considered view, make a complete chain leading to a hypothesis of the guilt of the appellant and to no other.

17. As a sequel to the above discussion, we hold that the judgment of the trial Court convicting the appellant and sentencing him, as aforesaid, is well founded. Consequently, the appeal is dismissed.

(Surjit Singh), J

November 26, 2007(ss) **(Surinder Singh), J**